

Remarks

Claims 11-16 and 18-25 are pending, prior to entry of this Amendment. Claims 14, 15, 16, 18, 19, and 21-25 are currently withdrawn from consideration. By way of this Amendment, claims 11 and 19 have been amended, and no new claims have been newly added, and claims 13-16 and 21-25 have been canceled. No new matter has been added.

Claim Rejections Under 35 USC 112, First Paragraph

Claims 11-13 and 20 are rejected under 35 USC 112, first paragraph, due to recitation of "solvates" and "derivatives". The claims have been amended to remove recitation of the language involved in the rejection. Therefore, the rejection under 35 USC 112, first paragraph has been obviated.

Objection to the Specification

The Office has noted that the term "Prozac" (page 1 of the specification) is a trademark and should be capitalized. The term has been amended accordingly.

Claim Rejections Under 35 USC 103

Claims 11-13 and 20 are rejected under 35 USC 103(a) over Roche et al. WO 03/088943A1 in view of Keller et al. 6,645,466. The Office relies on Roche as disclosing one of the claimed active ingredients, 3-(4-{[6-((2R)-2-hydroxy-2-[4-hydroxy-3-(hydroxymethyl)phenyl]ethyl]amino)hexyl]oxy}butyl)benzenesulfonamide, and on Keller as disclosing a different active ingredient in combination with magnesium stearate.

The claims have been amended to recite 4-[(1*R*)-2-[(6-{2-[(2,6-dichlorobenzyl)oxy]ethoxy}hexyl)amino]-1-hydroxyethyl]-2-(hydroxymethyl)phenol and pharmaceutically acceptable salts thereof as the sole recited active ingredient. Neither Roche nor Keller disclose or suggest the use of 4-[(1*R*)-2-[(6-{2-[(2,6-dichlorobenzyl)oxy]ethoxy}hexyl)amino]-1-hydroxyethyl]-2-(hydroxymethyl)phenol in a dry powder formulation, much less the combination of 4-[(1*R*)-2-[(6-{2-[(2,6-

dichlorobenzyl)oxy]ethoxy}hexyl)amino]-1-hydroxyethyl}-2-(hydroxymethyl)phenol and magnesium stearate in a dry powder formulation. As such, the claims must be found non-obvious, under 35 USC 103, over the cited references.

Request for Rejoinder

Applicants request rejoinder of process claim 19 in accordance with 37 CFR 1.475(b)(3). Claim 19 refers to and recites the substituent definitions as used in claim 11 such that claim 19 contains the limitations of product claim 11 and shares its special technical feature. As such, rejoinder is proper and rejoinder is respectfully requested. Further, Applicants respectfully request that rejoined claim 19 be allowed.

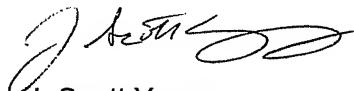
Applicants request rejoinder of method of treatment claim 18 in accordance with 37 CFR 1.475(b)(3). For examination purposes, Applicants propose a preliminarily election of asthma with subsequent examination of the additional conditions as provided by MPEP 803.02.

Conclusion

Applicants assert that the instant Amendment places the application in a condition for allowance, and such allowance is respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge any fees or credit any overpayment, particularly including any fees required under 37 CFR Sect 1.16 or 1.17, and any necessary extension of time fees, to deposit Account No. 07-1392. The Examiner is invited to contact the undersigned at (919) 483-8160, to discuss this case, if desired.

Respectfully submitted,



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